

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

4922010
R.I.

31076

FILE: B-218426
MATTER OF: Jack Burney

DATE: April 24, 1985

DIGEST:

1. Protester's late proposal sent by express mail the day before offers were due was properly rejected by the agency even though the Postal Service may have guaranteed delivery before the time set for receipt of proposals.
2. A late proposal cannot be considered on the basis that the proposal may offer the government certain advantages over those proposals which have been timely received.

Jack Burney protests the rejection of his late proposal by the Forest Service, Department of Agriculture, submitted under request for proposals (RFP) 13-85. The protest is dismissed pursuant to section 21.3(f) of our Bid Protest Regulations, which provides that when on its face a protest is clearly without merit it will be dismissed without requiring the submission of an agency report. 4 C.F.R. § 21.3(f) (1985).

The RFP, for preparation of a film on the history of the Eastern Region of the United States Forest Service, was issued on February 15, 1985, and set forth a closing date of 4:30 p.m. on Tuesday, March 19, 1985. The protester states that he had completed his proposal on Saturday, March 16, 1985, but that he could not find any United States Postal Service express mail depository open on the weekend. He states that accordingly he deposited his proposal in an express mail depository on Monday, March 18, 1985. The protester states that at the time he deposited his proposal package he was aware that the Postal Service offered "Guaranteed Next Day Delivery Before 3 p.m." to addresses in the Washington, D.C. zip code area. The protester states that his express mail customer receipt, submitted with his protest, shows that the Postal Service received his proposal package at 3:15 p.m., on March 18, 1985, so that delivery was guaranteed by 3 p.m., the next day--1-1/2 hours prior to the deadline for receipt of proposals.

031886

The protester advises that on March 22 he received a letter from the agency contracting officer which advised him that his proposal was late and could not be evaluated because it did not arrive in the agency's mail room until the morning of March 20 and was logged in by the contracting office at 9:55 a.m., that same day. He states that he then called the agency, was advised that he could not do anything to change the rejection of his proposal, and then protested to our Office.

The protester challenges the rejection of his late proposal on several grounds. He states that in view of the Postal Service's next day delivery guarantee he has no reason to believe that his proposal was not delivered by the Postal Service in a timely manner. He contends that the failure of his proposal to arrive on a timely basis should be regarded solely as due to mishandling by the agency unless it is proven that the proposal was not delivered by the Postal Service by the guaranteed time.

Our Office has consistently held that an offeror has the responsibility to assure timely arrival of its proposal and must bear the responsibility for its timely arrival unless specific conditions required for delivery are met. Durango Development Corp., B-215990, Aug. 29, 1984, 84-2 C.P.D. ¶ 238. The standard solicitation clause concerning late proposals permits consideration of late proposals sent by certified or registered mail at least 5 days prior to the closing date for receipt of proposals. A late proposal sent by mail may also be considered where delay is caused solely by government mishandling after timely receipt at the government installation. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-10.

We have received the unsolicited advice of the Office of the Postmaster, United States Postal Service, Houston, Texas, to which Mr. Burney had sent a copy of his protest, that the proposal package was not delivered by the Postal Service to the procuring agency until the morning of March 20--the day after the deadline for receipt of proposals. Furthermore, the Postal Service has advised that it was responsible for the delay in the delivery of the proposal. This would appear to eliminate the possibility that the protester's proposal was mishandled by the government after receipt at the government installation.

The protester states that even if the Postal Service did not deliver his proposal as guaranteed, the agency should evaluate his proposal because express mail delivery is consistent with the "spirit" of section L-9 of the RFP--"Late Submissions, Etc." While the protester has not provided us with a copy of the RFP clause on late submissions, as stated above, the standard solicitation clause concerning late proposals provides in part that late proposals mailed by certified or registered mail at least 5 days prior to the closing date for submissions may be considered. We have held that express mail is not the equivalent of registered or certified mail and thus does not fall within the late proposal exceptions. In any event, the protester here mailed his proposal only 1 day, rather than at least 5 days, before the proposals were due, and therefore the proposal would properly be for rejection even if express mail were treated as the equivalent of registered or certified mail. Hubbs-Sea World Research Institute, B-210579, Mar. 1, 1983, 83-1 C.P.D. 193.

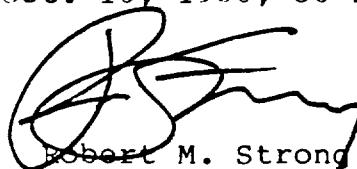
The protester also asserts that it would be unfair for the government to accept a proposal less favorable than his because the late receipt of his proposal was the government's fault, not his. As set forth above, the late receipt of the protester's proposal was due to a delay in its delivery by the Postal Service, concerning which we have stated that the fact that a protester's proposal was sent by express mail does not remove the offeror's obligation to assure timely arrival of its proposal. Environmental Health Systems, Inc., B-204249, Aug. 24, 1981, 81-2 C.P.D. ¶ 171 and Decilog, Inc., B-193914, Feb. 5, 1979, 79-1 C.P.D. ¶ 81. Furthermore, delay by the Postal Service does not constitute mishandling by the government after receipt of a proposal and thus provides no basis for the consideration of a late proposal. Cal Poly Kellogg Unit Foundation, Inc., B-202878, May 5, 1981, 81-1 C.P.D. ¶ 346.

The protester next contends that the lateness of his proposal be waived as a minor informality or irregularity since he believes that it is likely that the consideration of his proposal will result in an advantage to the government.

We have held that a late proposal which does not fall under any of the exceptions under which it may be considered must be rejected as late even though it may be more advantageous than those timely received. See Federal Sales Services, Inc., 58 Comp. Gen. 656 (1979), 79-2 C.P.D. ¶ 36. The maintenance of confidence in the

integrity of the government procurement system is of greater importance than the possible advantage to be gained by considering a late proposal or modification in a particular procurement. Federal Sales Services, Inc., 58 Comp. Gen. at 658, 79-2 C.P.D. ¶ 36 at 3-4 and Real Fresh, Inc., B-204604, Dec. 31, 1981, 81-2 C.P.D. ¶ 522.

Lastly, the protester suggests that steps be taken to amend the procurement regulations which he believes impose "technicalities" which thwart the government's ability to consider "timely submitted, fair, and advantageous proposals." As set forth above, the protester's proposal was not timely submitted. The late proposal rule is not a "technicality" as the protester asserts, but exists because the manner in which the government conducts its procurements must be subject to clearly defined standards that apply equally to all so that fair and impartial treatment is ensured. To permit one offeror to deliver its proposal after the closing date inevitably would lead to confusion and unequal treatment of offerors and thereby would tend to subvert the competitive system. Real Fresh, Inc., B-204604, supra, 81-2 C.P.D. ¶ 522 at 4-5 and Timex Corporation, B-197835, Oct. 10, 1980, 80-2 C.P.D. ¶ 266.



Robert M. Strong
Deputy Associate General Counsel